NBCON-ALD

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS A DULY CONSTITUTED ELECTORAL BOARD

Objections of: JACQUELINE JOHNSON	)	
	)	
To the Nomination	)	
Papers of: HAROLD "NOONIE" WARD	)	No.: 03-EB-ALD-019
	)	
Candidate for the office of	)	
Alderman of the Ninth Ward,	)	
City of Chicago	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Theresa M. Petrone, and Richard A. Cowen, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of JACQUELINE JOHNSON ("Objector") to the nomination papers ("Nomination Papers") of HAROLD "NOONIE" WARD, candidate for the office of Alderman of the Ninth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 25, 2003, having convened on December 30, 2002, at 10:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.

2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner RODNEY W. STEWART for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the

Call. The following persons, among others, were present at such hearing; the Objector, JACQUELINE JOHNSON, by counsel, the Candidate, HAROLD "NOONIE" WARD, by counsel.

7. The Objections challenge the Candidate's Nomination Papers on three grounds: (1) that upon information and belief, the Candidate is a convicted felon and not qualified to hold the office of Alderman in the City of Chicago (Objections, ¶5); (2) that the name "Noonie" is not the Candidate's name nor is it a nickname pursuant to the Election Code (Objections, ¶6); and (3) the Candidate has not been a resident, for two years prior to the election, of any ward containing a part of the 9th Ward as it was configured prior to the 2002 redistricting nor has he been a resident of the 9th Ward for two years prior to the election as required under Illinois law and therefore does not have the required qualifications to hold the office of Alderman of the 9th Ward.

8. As to the objection that the Candidate is a convicted felon and not qualified to hold the office of Alderman in the City of Chicago, Section 3.1-10-5(b) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5) provides that a person is not eligible for an elective municipal office if that person has been convicted in any court located in the United States of any infamous crime, bribery, perjury or other felony.

9. The Objector produced a certified copy of conviction, certified by the Clerk of the Court, demonstrating a criminal conviction of a "Harold Ward." The Hearing Examiner denied the Objector's request to call the Candidate as an adverse witness for the purpose of linking the Candidate to the criminal conviction, concluding that the Candidate need not assist the Objector in her effort to link him to the certified conviction document and to have him removed from the ballot. The Objector produced no other evidence in support of this objection.

10. The Hearing Examiner has recommended that the Objection as to the alleged criminal conviction be overruled in that the Objector failed to produce satisfactory evidence that the "Harold Ward" referred to in the certified conviction and the Candidate are one and the same person.

11. The Electoral Board adopts the Hearing Examiner's recommended finding regarding the felony conviction objection. The Electoral Board further finds that even if the Objector had demonstrated by a preponderance of the evidence that the Candidate had been convicted of a felony, 65 ILCS 5/3.1-10-5 should not be applied to bar the Candidate from the ballot on the basis of such conviction. In *Ambrosio Medrano v. Chicago Board of Election Commissioners*, 02 CH 19784 (Cir. Ct Cook Cty., November 27, 2002), the Circuit Court of Cook County held that 65 ILCS 5/3.1-10-5(b) is unconstitutional to the extent that it does not restore eligibility to hold a legislatively created office to a person convicted of a felony or other infamous crime upon completion of the sentence.

12. Generally speaking, persons not parties to a lawsuit are not affected by a judgment, they are not bound by it, and they may not enforce it. *Sundance Homes, Inc., v. County of*

DuPage, 195 Ill.2d 257, 274, 746 N.E.2d 254, 265 (2001). Thus, the Candidate here is not technically affected or bound by the judgment in *Medrano*, nor may he enforce it. The Electoral Board is also mindful that decisions of the circuit courts are not precedential and binding on the Board. *Norton v. City of Chicago,* 293 Ill.App.3d 620, 690 N.E.2d 119 (1st Dist. 1997); *Harvard State Bank v. County of McHenry*, 251 Ill.App.3d 84, 620 N.E.2d 1360 (2nd Dist. 1993).

13. Nevertheless, the Electoral Board finds that, in the absence of any decision of a higher court ruling upon the constitutionality of 65 ILCS 5/3.1-10-5, the decision of the Circuit Court of Cook County in the *Medrano* case is persuasive authority for the proposition that the statute cannot be constitutionally applied to bar a person who has been convicted of a felony and who has served his or her sentence from becoming a candidate for the office of Alderman of the City of Chicago. Accordingly, paragraph 5 of the Objector's petition is overruled.

14. As regards paragraph 7 of the Objector's Petition alleging that the Candidate has not resided in the 9th Ward for at least two years prior to the election, 65 ILCS 20/21-14(a) requires that no member may be elected to the Chicago City Council unless that person has resided in the ward at least 2 years before the date of the election. The statute does make an exception for an election following a redistricting, such as the case for this February 25, 2003 election, providing that a candidate for Alderman may be elected from any ward containing a part of the ward in which he or she resided for the 2 years prior to the election.

15. The Objector presented evidence in the form of a driver's abstract from the Secretary of State to show that the Candidate lived at an address outside of the 9th Ward. The Candidate admitted that at one time he used that address but he never lived there. The Candidate produced witnesses who testified on his behalf that he had lived at his current residential address for a number of years. The Hearing Examiner concluded, based on the evidence presented, that the Candidate resided within the 9th Ward of the City of Chicago for two years prior to filing his Nomination Papers.

16. As regards the objection that the Candidate's inclusion of "Noonie" in his name violates the Election Code, the Hearing Examiner found that 10 ILCS 5/10-5.1 permits the use of nicknames on the ballot and that the Candidate's use of "Noonie" was in compliance with that statute.

17. The Electoral Board adopts the Hearing Examiner's recommended finding as to the Candidate's use of a nickname and overrules paragraph 6 of the Objector's Petition.

18. The Electoral Board finds, therefore, that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of JACQUELINE JOHNSON to the Nomination Papers of HAROLD "NOONIE" WARD, candidate for election to the office of Alderman of the Ninth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of HAROLD "NOONIE" WARD, candidate for election to the office of Alderman of the Ninth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

Dated: Chicago, Illinois, this Fifth day of February, 2003.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 10 days after the decision of the Electoral Board.